

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

HELENA CRUZ,

Plaintiff,

-against-

UNITED STATES OF AMERICA,

Defendant,

Civil No.:

COMPLAINT

Plaintiff Helena Cruz (“Plaintiff”), by the undersigned attorneys, as and for her Complaint herein alleges as follows:

JURISDICTION AND VENUE

1. Jurisdiction of this Court is based upon 28 U.S.C. 1346 (b)(1), as it involves claims under the Federal Tort Claims Act (hereinafter “FTCA”) against the United States for personal injuries caused by the negligence of government employees acting within the scope of their employment.

2. On March 23, 2018, Plaintiff duly served a Notice of Claim upon the United States Department of Health and Human Services pursuant to the FTCA, asserting a claim for Medical Malpractice pertaining to the treatment rendered to Plaintiff on March 1, 2018, and continuing in a continuous course of treatment through March 1, 2018.

3. As such, Plaintiff’s Notice of Claim was timely.

4. On August 21, 2018, the United States Department of Health and Human Services issued a written letter denying Plaintiff’s claim.

5. Upon information and belief, all conditions precedent to the commencement of this action has been satisfied and plaintiff has exhausted her administrative remedies.

6. As such, this Complaint has been filed in a timely manner.

7. Venue is based upon 28 U.S.C 1391(e), in that the causes of action arose from the actions of physicians deemed to be employees of the United States of America and Plaintiff resides within the Southern District of New York.

PARTIES

8. Plaintiff, Helena Cruz, at all times hereinafter mentioned, was and is a citizen of the United States, resident and domiciled in the State of New York, County of New York.

9. Upon information and belief, at all times herein mentioned William F. Ryan Community Health Center, including the location located at 110 West 97th Street, New York, New York, was and still is a domestic not-for-profit corporation, duly organized and existing under and by virtue of the laws of the State of New York.

10. William F. Ryan Community Health Center employs, supervises, manages, controls doctors and nurses, who provide medical treatment to patients, and William F. Ryan Community Health Center holds itself out to the public at large, and more particularly, to Plaintiff as a medical facility duly qualified and capable of rendering adequate medical care and treatment.

11. At all relevant times herein, William F. Ryan Community Health Center employed, supervised, managed and controlled the doctors and nurses.

12. Based upon information provided by Department of Justice and the Department of Health and Human Services, William F. Ryan Community Health Center is wholly and/or partially funded by the federal government.

13. Upon information and belief, the William F. Ryan Community Health Center is a public health center program grantee under 42 U.S.C. §254b and a Federally Declared Health Care Center.

14. Based upon information provided by Department of Justice and the Department of Health and Human Services, William F. Ryan Community Health Center is considered an agency and/or employee of the federal government.

15. Upon information and belief, Defendant, through its agency, the Department of Health and Human Services, operates the William F. Ryan Community Health Center.

FIRST CAUSE OF ACTION

(Medical Malpractice)

16. Between 2014 and 2018, Plaintiff engaged the services and was under the care of Defendant, and in particular, the William F. Ryan Community Health Center, (“WRCHC”) so as to receive medical care and treatment from them, as a paying customer, with continuous treatment continuing through 2018.

17. Defendant undertook to render medical services to Plaintiff and in rendering such services to Helena Cruz, owed her the duty to use that degree of care, skill and diligence, used by physicians, primary care physicians, nurses and medical facilities.

18. On or around March 1, 2016, Defendant drew blood from Plaintiff’s antecubital fossa in a negligent manner resulting in an axonal lesion of Plaintiff’s left lateral antebrachial cutaneous sensory nerve in Plaintiff’s left forearm.

19. Defendant, and in particular, WRCHC continued treating Plaintiff after March 1, 2016, in a continuous course of treatment through at least March 2018.

20. As such, Plaintiff's Notice of Claim served upon Defendant on or around March 23, 2018, was timely.

21. The injury has caused Plaintiff severe pain and suffering, loss of sensation numbness, depression, loss of employment and other economic losses.

SECOND CAUSE OF ACTION

(Negligent Hiring)

22. Plaintiff reasserts and realleges each and every allegation contained in the prior paragraphs with the same force and effect as if hereinafter set forth at length.

23. Defendant, prior to the granting or renewing of privileges or employment of physicians, residents, nurses and others involved in the care of Plaintiff failed to investigate the qualifications, competence, capacity, abilities and capabilities of said physicians, residents , nurses and other employees, including but not limited to obtaining the following information: patient grievances, negative health care outcomes, incidents, injuries to patients, medical malpractice actions commenced against said persons, including the outcome thereof, any history of association, privilege and/or practice at other institutions, any discontinuation of said association, employment privilege and/or practice at said institution, and any pending professional misconduct proceeding in this State or another State, the substance of the allegations in such proceedings and any additional information concerning such proceedings and defendant hospital failed to make sufficient inquiry of the physician, nurse and/or employees and institutions which should and did have information relevant to the capacity, ability and competence of said persons rendering treatment.

24. Had Defendant made the above stated inquiry or in the alternative had they reviewed and analyzed the information obtained in a proper manner, privileges and/or employment would not have been granted and/or renewed.

25. By reason of Defendant's failure to meet the aforementioned obligation, Plaintiff was treated by physicians, nurses and/or other employees who were lacking the requisite skills, abilities, competence and capacity, as a result of which causing Plaintiff severe pain and suffering, loss of sensation numbness, depression, loss of employment and other economic losses.

WHEREFORE, Plaintiff demands judgment against Defendant in the amount of five Million (\$5,000,000.00) dollars, together with interest, the cost and disbursements of this action and such other and further relief as this Court may deem just and proper.

Dated: Brooklyn, New York
August 27, 2018

Lazar, Grunsfeld Elnadav, LLP

By: /GG/
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